STATE OF IOWA

DEPARTMENT OF COMMERCE

UTILITIES BOARD

IN RE: ASSESSMENT ALLOCATION RULES	DOCKET NO. RMU-01-13

ORDER ADOPTING RULES

(Issued July 26, 2002)

Pursuant to the authority of Iowa Code §§ 17A.4, 475A.6, 476.2, 476.10A, 476.101(10), 478.4, 479.13, 479A.6, 479B.10, and 546.7 (2001), and Iowa Code Supplement 476.10, the Utilities Board (Board) adopts the rules attached hereto and incorporated by reference. In addition, the Board adopts the Public Comment Summary and Board Response attached hereto and incorporated by reference. The rules and the summary will be posted on the Board's website

These rules amend 199 IAC Chapter 17, the Board's assessment allocation rules. The amendments implement changes to the Board's allocation authority in Iowa Code Supp. § 476.10 (2001). They also clarify, update, and correct the rules, and put the allocation method the Board will use in § 476.101(10) dockets into rule. The amendments also refer the public to the separate assessment authority in Iowa Code chapters 478, 479, 479A, and 479B, and the accompanying rules. The reasons for adoption of these rules are set forth in the notice of intended action published in the Iowa Administrative Bulletin on January 9, 2002, as ARC 1279B, in

the attached adopted and filed preamble, and in the attached public comment summary and Board response.

IT IS THEREFORE ORDERED:

1. The rules attached hereto and incorporated by this reference are adopted by the Board.

2. The Public Comment Summary and Board Response attached hereto and incorporated by this reference is adopted by the Board.

3. The Executive Secretary is directed to submit for publication in the Iowa Administrative Bulletin an adopted and filed notice in the form attached to and incorporated by reference in this order.

4. The rules and the summary will be posted on the Board's website at www.state.ia.us/iub.

UTILITIES BOARD

/s/ Diane Munns

/s/ Mark O. Lambert

ATTEST:

/s/ Sharon Mayer
Executive Secretary, Assistant to

/s/ Elliott Smith

Dated at Des Moines, Iowa, this 26th day of July, 2002.

UTILITIES DIVISION [199]

Adopted and Filed

Pursuant to Iowa Code sections 17A.4, 475A.6, 476.2, 476.10A, 476.101(10), 478.4, 479.13, 479A.6, 479B.10, and 546.7 (2001), and Iowa Code Supplement 476.10, the Utilities Board (Board) gives notice that on July 26, 2002, the Board issued an order in Docket No. RMU-01-13, In re: Assessment Allocation Rules, "Order Adopting Rules." The order amended 199 IAC Chapter 17, the Board's rules that describe and implement the method the Board uses to assess expenses incurred by the Board and the Consumer Advocate Division of the Department of Justice (Consumer Advocate) on utilities and other parties as authorized by Iowa Code chapters 476, 478, 479, 479A, 479B, and section 475A.6.

On December 14, 2001, the Board issued an order commencing a rule making to receive public comment on the proposed amendments to the Board's assessment allocation rules at 199 IAC Chapter 17. Notice of Intended Action was published in the Iowa Administrative Bulletin on January 9, 2002, as ARC 1279B.

The amended assessment allocation rules are intended to implement the changes to the Board's assessment allocation authority in Iowa Code Supp. section 476.10, and to clarify, correct, and update the rules where needed. They are also intended to adopt the allocation method the Board used in several dockets under Iowa Code section 476.101(10) into rule. Finally, in response to comments received that indicated the commenter was unfamiliar with the separate assessment authority

in electric franchise, pipeline permit, and related types of cases, the rules refer the public to the separate assessment authority for those cases.

The Board received a number of written comments in favor of the proposed rules, and a number of written comments expressing concern that the proposed rules regarding direct assessments would chill participation in Board cases by potential intervenors. A number of specific suggestions for changes were also received. Some of the commenters questioned whether the Board intended to assess particular types of persons in particular types of cases and requested that the Board state whether it was exempting certain persons from direct assessments. Some of the comments indicated the commenters were unclear regarding the difference in assessment authority under Iowa Code sections 476.10 and 476.101(10). One of the commenters was unclear regarding the difference between remainder and direct assessments. Only utilities are subject to remainder assessments, as provided in Iowa Code Supp. section 476.10 and rules 17.2(2) and 17.6(2)"b."

There is a significant difference between assessments made under Iowa Code section 476.10 and those made under section 476.101(10). The emphasis in Iowa Code section 476.10 is on Board discretion to make direct assessments. Iowa Code section 476.101(10) contains mandatory language that the Board shall allocate costs to the parties and participants. One of the reasons for this difference is that section 476.101(10) reflects a legislative recognition of, and support for, competition in the telecommunications industry. With competition, the Board's costs are no longer necessarily recoverable as a monopoly's regulatory expense.

Assessments made under Iowa Code chapters 478 through 479B are even more different. These chapters govern electric franchise and pipeline permitting

proceedings. Iowa Code sections 478.4 (transmission line franchises), 479.13 (intrastate pipeline permits) 479A.6 and .7 (interstate pipelines), and 479B.10 (hazardous liquid pipeline permits) contain mandatory language that require the utility to pay all costs. Although chapter 479A does not contain specific language that requires the utility to pay the Board's cost of review of its land restoration plan, the Board would ordinarily assess all its costs to the utility pursuant to section 476.10. Some of the comments received by the Board showed the commenters did not have a clear understanding of these differences. The Board has added language to the rules to clarify the differences and when each rule applies.

Due to the number of written comments received and the concerns expressed, the Board scheduled an opportunity for oral comment. This was held on April 19, 2002. A number of oral comments were received. Several commenters continued to express the concern that the proposed direct assessment rule would chill participation by intervenors, some expressed a variety of concerns, and others expressed support for the proposed rules.

The Board shares the concern regarding the possible chilling effect of direct assessments on intervention. The Board depends on intervenors to more fully develop the record in cases before it so it can make better decisions. The Board recognizes the statute gives it discretion to balance the need to assess costs on cost-causers with the need for widespread participation in its cases. The Board also recognizes that potential assessment of costs may have a chilling effect on some interventions. Therefore, the Board made a number of changes to the proposed rules in an attempt to more clearly define when it will and will not directly assess costs.

The Board has made a number of changes to the proposed rules as a result of the comments. The Board has attempted to clarify the types of cases in which a certain category of person would not be directly assessed, or would only be directly assessed in certain situations. The Board has attempted to clarify the differences between assessments under Iowa Code sections 476.10, 476.101(10), chapters 478, 479, 479A, and 479B, and when each applies. For example, in electric franchise cases under chapter 478, Iowa Code section 478.4 provides that the utility shall pay all costs. A person who files an objection, or an eminent domain parcel owner who chose to participate, would not be directly assessed. The rules refer the reader to the applicable code sections and rules governing assessments in electric franchise and pipeline cases.

A detailed summary of the oral and written comments received and the Board's responses to those comments is contained in the file in this docket in the Board Records Center. In addition, the summary will be available on the Board's website at www.state.ia.us/iub.

In addition, subparagraph "f" is added to subrule 17.6(2), to provide that the Board may choose not to bill utilities with gross operating revenues of $50,000.00 or less for their share of the remainder assessment. This amendment reflects actual practice and is done because it would cost the Board more to bill the company than would be received in revenue.

These amendments are intended to implement Iowa Code chapters 17A, 475A, 476, 478, 479, 479A, 479B, 546, and Iowa Code Supp. Section 476.10.

These amendments will become effective September 25, 2002.

The following amendment is adopted.

Rescind rules 199—17.1(475A, 476) to 199—17.9(476) and adopt the following **new** rules in lieu thereof:

199—17.1(475A,476,546) Purpose. The purpose of this chapter is to describe and implement the method the board uses to assess expenses incurred by the board and the consumer advocate on utilities and other parties pursuant to Iowa Code Supp. section 476.10 and Iowa Code section 476.101(10). It refers to the code sections and rules that govern assessments under Iowa Code chapters 478, 479, 479A, and 479B. As used in this chapter, reference to expenses of the board includes expenses of the entire utilities division.

199—17.2(475A,476) Definitions. The following definitions apply to the rules in this chapter.

17.2(1) A "direct assessment" is the charge to a person bringing a proceeding before the board or to persons participating in matters before the board:

a. For expenses attributable to the board's duties related to such proceeding or matter incurred by the board; and

b. For certified expenses incurred and directly chargeable by the consumer advocate in the performance of its duties related to such proceeding or matter.

The term "person" includes any legal entity. However, "person" does not include the consumer advocate.

17.2(2) A "remainder assessment" is the charge to all persons providing service over which the board has jurisdiction for the total expenses incurred during each fiscal year in the performance of the board's duties under law and the certified expenses of the consumer advocate~~,~~ after deducting the direct assessments. The remainder

assessment may consist of two parts: expenses that can be identified with a specific type of utility service, and expenses that cannot be so identified.

17.2(3) "Overhead expenses" are all operating costs of the board and the consumer advocate excluding salaries and related benefit costs borne by the state.

17.2(4) "Gross operating revenues from intrastate operations" include all revenues from Iowa intrastate utility operations during the last calendar year, except uncollectible revenues, amounts included in the accounts for interdepartmental sales and rents, and gross receipts received by a cooperative corporation or association for wholesale transactions with members of the cooperative corporation or association, provided that the members are subject to assessment by the board based upon the members' gross operating revenues, or provided that such member is an association whose members are subject to assessment by the board based upon the members' gross operating revenues.

199—17.3(476) Expenses to be included in direct assessments. In its direct assessments, the board will not bill more than costs assigned to a docket.

17.3(1) Salaries of board and consumer advocate employees will be computed at an expertise level on an hourly rate obtained by dividing the individual's merit class average annual salary, and related benefit costs borne by the state, by the appropriate number of standard working hours for the year.

The time of all board and consumer advocate employees engaged on the matter for which a direct assessment is to be made, whether on the property of a public utility, in the offices of the board, or elsewhere, including travel time, will be included.

17.3(2) Travel expenses incurred in an investigation or in rendering services by board and the consumer advocate personnel or by others employed by the board or

consumer advocate will be included. Travel expenses include costs of transportation, lodging, meals and other normal expenses attributable to traveling.

17.3(3) Costs of necessary consultants, facilities, or equipment will be included.

17.3(4) Overhead expenses of the board and the consumer advocate reasonably attributable to activities of the board and consumer advocate ~~which~~ that can be directly assessed under Iowa Code Supplement section 476.10 or Iowa Code section 476.101(10) will be included. The following method will be used to calculate the overhead expense factor used to calculate the overhead expenses reasonably attributable to activities of the board and consumer advocate.

a. The overhead expense factor used in direct billing overhead expenses will be recalculated and implemented with the July billing each year. The overhead expense factor will be determined using the following formula:

$$\text{20XX Fiscal Year Overhead Expense Factor} = \frac{\text{20XX Approved Budget Fiscal Year Expenditures}}{\text{20XX Approved Budget Fiscal Year Salaries}}$$

b. The "Approved Budget Fiscal Year Expenditures" and "Approved Budget Fiscal Year Salaries" are for those of the board and the consumer advocate added together.

c. For each merit class salary, the overhead expense factor will be multiplied by the salary computed pursuant to subrule 17.3(1) to produce the hourly rate to be charged in the direct assessment.

199—17.4(476) Direct assessments under Iowa Code section 476.10.

17.4(1) *Applicability.* This rule applies only to direct assessments under Iowa Code Supplement section 476.10.

17.4(2) The board will not directly assess an individual who files a complaint against a public utility, so long as the individual's participation in the proceeding is in good faith. The board will not directly assess an individual who files a protest or inquiry or intervenes in a proceeding involving a rate change by a public utility, so long as the individual's participation in the proceeding is in good faith. The board will not directly assess any person for filing written or oral comments in a rulemaking proceeding.

17.4(3) Ordinarily, the board will not directly assess a person who intervenes in a board proceeding. However, the board may decide to directly assess a person who intervenes if the person's intervention or participation is not in good faith, the intervention significantly expands the scope of the proceeding without contributing to the public interest, or the board determines there are unusual circumstances warranting assessment. If the board determines there are unusual circumstances warranting assessment, it will issue an order at the earliest reasonable opportunity.

17.4(4) The board will consider the following factors in deciding whether to directly assess a person, and the amount to be directly assessed, pursuant to Iowa Code Supplement section 476.10.

a. Whether the person's intervention and participation in a board proceeding expanded the scope of the proceeding without contributing to the public interest.

b. Whether the person's intervention and participation in a board proceeding was in good faith.

c. The financial resources of the person.

d. The impact of assessment on participation by intervenors.

e. The nature of the proceeding or matter.

f. The contribution of the person's participation to the public interest.

g. Whether directly assessing costs would be fair and in the public interest.

h. Other factors deemed appropriate by the board in a particular case.

17.4(5) The board may decide not to directly assess a person after considering the factors in subrule 17.4(4).

17.4(6) In determining the financial resources of the person in 17.4(4)"c" above, the board may use revenue information previously submitted by the person to the board. If the person has not previously provided revenue information to the board, or has submitted incomplete information, the board may request that the person submit revenue information, and if the person does not do so, may make assumptions regarding the person's financial resources for purposes of the direct assessment.

17.4(7) Most Iowa Code section 476.97 proceedings will be considered for direct assessment under Iowa Code section 476.10 and this rule. The only exception is a section 476.97 complaint brought under section 476.101(8), which will be assessed under 476.101(10).

199—17.5(476) Reporting of operating revenues. Each year, the board will send an annual report form to every public utility. On or before April 1 of each year, every public utility shall file with the board its annual report that includes a verified report, on forms prescribed by the board, showing its gross operating revenues from Iowa intrastate operations during the preceding calendar year. Such revenues are to be reported on the accrual basis or the cash basis consistent with the annual report filed with the board.

199—17.6(475A,476) Compilation and billing of assessment.

17.6(1) Direct assessments. The board shall ascertain and add to the direct assessment, certified expenses incurred by the consumer advocate directly chargeable to the person. The board does not review the expenses certified to it by the consumer advocate. The board may present a bill for the direct assessment to any person either at the conclusion of the proceeding or matter, or from time to time during its progress.

17.6(2) Remainder assessments.

a. The revenues for the remainder assessment shall be compiled by the board based on the report provided pursuant to rule 17.5(476).

b. The board shall ascertain the total of the division's expenses incurred during each fiscal year, and add to it the certified expenses of the consumer advocate. Next, the board shall add together all amounts directly assessed, pipeline assessments, electric transmission line assessments, federal reimbursements, and miscellaneous reimbursements. This total shall be deducted from the total of the division's and consumer advocate's expenses. The remaining amount is the amount to be recovered through the remainder assessment. Subject to paragraphs 17.6(2)"c" and "d," the board may assess the remaining amount to all persons providing service over which the board has jurisdiction in proportion to the respective gross operating revenues of such persons from Iowa intrastate operations over which the board has jurisdiction during the last calendar year.

c. If any portion of the remainder can be identified with a specific type of utility service, the board shall assess those expenses only to the entities providing that type of service over which the board has jurisdiction.

d. The remainder assessments for gas and electric public utilities exempted from rate regulation pursuant to Iowa Code chapter 476 will be computed at one-half the rate used to compute the assessment for other persons.

e. The board may make the remainder assessments on a quarterly basis, based upon estimates of the expenditures for the fiscal year for the division and the consumer advocate. The board shall conform the amount of the estimated prior fiscal year's assessments to the actual fiscal year expenditures not more than 90 days following the close of the fiscal year.

f. If a utility has gross operating revenue of $50,000 or less for the prior calendar year, the Board may decide not to bill the utility for its share of the remainder assessment.

17.6(3) The bill or accompanying letter of transmittal to each utility shall indicate the assessable revenue for the utility, the rate at which the assessment was computed, and the assessment amount. Bills must be paid within 30 days of receipt or an objection filed in writing pursuant to Iowa Code Supplement section 476.10.

199—17.7(476) Funding of Iowa energy center and global warming center. The board will send a bill to each gas and electric utility for funding the Iowa energy center and global warming center. Within 30 days of receipt of the bill, each gas and electric utility shall remit to the utilities division of the department of commerce a check made payable to the treasurer of state for one-tenth of one percent of the total gross operating revenue during the last calendar year derived from its intrastate public utility operations for the funding of the Iowa energy center and global warming center. This remittance shall not be represented on customers' bills as a separate item.

199—17.8(476) Assessments under Iowa Code section 476.101(10).

17.8(1) *Applicability.* This rule applies to assessments under Iowa Code section 476.101(10).

17.8(2) In making assessments under Iowa Code section 476.101(10), the Board will allocate costs and expenses to all parties and participants. The allocation will not necessarily be an equal allocation.

17.8(3) The specific method of allocation will be made on a case-by-case basis, and ordinarily will be included in the final order in the docket.

17.8(4) The factors the board will consider may include, but are not limited to, Iowa revenues, grouping of parties and participants on the basis of position on the issues, and the factors under rule 17.4(476). Joint participation by similarly oriented parties and participants will be encouraged by favorable allocations.

17.8(5) The most recent revenue reports filed pursuant to rule 17.5(476) will be used to determine assessments, if available. If the participant has not previously provided revenue information to the board, or has provided incomplete revenue information, the board may request that the participant submit revenue information. If the participant does not do so, the board may make assumptions regarding the participant's revenue for purposes of the assessment. The board may make adjustments to the revenue figures as appropriate for the particular type of case.

199—17.9(478, 479, 479A, 479B) Assessments under Iowa Code chapters 478, 479, 479A, and 479B.

17.9(1) This rule applies to assessments in electric franchise and pipeline permitting proceedings under Iowa Code chapters 478, 479, and 479B, and to board and consumer advocate costs under chapter 479A.

17.9(2) Assessments in electric franchise proceedings conducted pursuant to Iowa Code chapter 478 shall be as provided in Iowa Code section 478.4.

17.9(3) Assessments in pipeline permit proceedings and construction inspections conducted pursuant to Iowa Code chapter 479 shall be as provided in Iowa Code section 479.13 and rule 10.10(479).

17.9(4) Assessments for construction inspections conducted pursuant to Iowa Code chapter 479A shall be as provided in Iowa Code section 479A.6 and rule 12.5(479A). The board will assess costs of reviewing a utility's land restoration plan under section 479A.14(9) as provided in Iowa Code section 476.10.

17.9(5) Assessments in hazardous liquid pipeline permit proceedings conducted pursuant to Iowa Code chapter 479B shall be as provided in Iowa Code section 479B.10 and rule 13.10(479B).

July 26, 2002

/s/ Diane Munns
Diane Munns
Chairman

RMU-01-13 ASSESSMENT ALLOCATION RULES
PUBLIC COMMENT SUMMARY AND BOARD RESPONSE

In order to shorten the published preamble, reference will be made to this document, which will be available to the public in the Records Center and on the Board's website.

Written comments:

On January 11, 2002, Peoples Natural Gas Company, Division of UtiliCorp United Inc. (Peoples), filed comments in support of the changes intended to clarify and correct the rules and conform them to the amended statute, and stated it did not object to the rescission of rule 17.4, the amendment to rule 17.5, or the intent to adopt the allocation method used in Docket Nos. SPU-99-22 and SPU-99-30.

On January 23, 2002, the Consumer Advocate Division of the Department of Justice (Consumer Advocate) filed a "Written Statement of Position" that it did not object to the proposed rules.

On January 29, 2002, Alliant Energy filed a statement of position in support of the proposed rules.

On January 29, 2002, the Iowa Association of Electric Cooperatives (IAEC) filed comments on the proposed rules. The IAEC stated it generally believed the proposed amendments were consistent with the legislative enactment and should be supported, subject to a number of specific comments. The IAEC suggested that the rules be clarified to ensure allocation and assessment for the total of the utilities division expenses, rather than merely those of the Board itself. Although

the Chapter 17 rules have been in effect for many years using expenses of the Board to include expenses of the entire division without apparent confusion, the Board will add the clarification as suggested. The IAEC suggested the language "related benefit costs borne by the State" be added to subrule 17.2(3) to be consistent with subrule 17.3(1). The Board agrees and this language will be added.

Finally, the IAEC suggested the Board add the exclusion for wholesale revenues of cooperatives, provided the cooperatives' members are subject to assessment, to the definition of "gross operating revenues" in subrule 17.2(4), so it is clear G & T cooperatives and their retail distribution members are not assessed twice on the same revenue for the funding of the Iowa Energy Center and Global Warming Center. The IAEC stated that the "Legislature intended the exclusion to apply to the entire section, not just the provisions of subrule 17.6(2)." The legislative intent for the exclusion to apply to funding for the Iowa Energy Center and Global Warming Center is not clear. 2001 Iowa Acts, chapter 9, section 1, which contains the exclusion, amended Iowa Code section 476.10. The funding provision for the Iowa Energy Center and Global Warming Center is contained at Iowa Code section 476.10A and includes no such exclusion. However, the Board's practice has been to exclude a G & T's wholesale revenues received from its members, so long as the members themselves are subject to the assessment. This is based on a declaratory ruling issued by the Board in Docket No. DRU-91-9 on June 28, 1991, and is done for the reason given by the IAEC in its comments: the Board does not intend to assess the G & T cooperatives and

their retail distribution members twice on the same revenue for the purpose of funding the Iowa Energy Center and Global Warming Center. Therefore, the Board will add this exclusion to the definition of "gross operating revenues" in subrule 17.2(4) as requested.

On January 29, 2002, MidAmerican Energy Company (MidAmerican) filed a "Statement of Position." In general, MidAmerican supported the proposed rules, and provided a number of what it characterized as minor changes to make the rules more consistent with the new statute. One suggestion was to change proposed subrule 17.2(2), which says a remainder assessment may consist of two parts, because the statute requires industry-specific assessments if expenses can be identified with a particular industry. MidAmerican misunderstands the proposal. The definition of remainder assessment contains "may" only because some remainder assessments will include industry-specific remainder assessments as well as general remainder assessments and some will not. The Board fully intends to comply with the mandatory language of the statute that requires industry-specific remainder assessments when they can be identified. MidAmerican suggested the Board use the actual merit class salary of employees who work on cases rather than an average of the merit class salary. The Board will not adopt the suggestion because it does not wish to invite pressure to use differently paid staff. In addition, the rule has been in existence for many years as currently drafted and has worked fairly. MidAmerican also suggested the Board clarify proposed rule 17.4 by explicitly stating that intervention in a proceeding that does not expand the scope of the proceeding

will not normally result in a direct assessment to the intervenor. MidAmerican stated although the proposed rule may say this implicitly, it is important that the possibility of cost assessment not chill intervention.

The Board shares the concern regarding the possible chilling effect of direct assessments on intervention. The Board depends on intervenors to more fully develop the record in cases before it so it can make better decisions. The Board recognizes the statute gives it discretion to balance the need to assess costs on cost-causers with the need for widespread participation in its cases. The Board also recognizes that potential assessment of costs may have a chilling effect on some interventions. Therefore, given the number of comments regarding this issue, the Board provided an opportunity for oral comment on April 19, 2002. The Board made a number of changes to the proposed rules in an attempt to more clearly define when it will and will not directly assess costs.

The Iowa Association of Municipal Utilities (IAMU) and Missouri River Energy Services (MRES) filed joint comments on January 29, 2002. IAMU and MRES were very concerned about the chilling effect of potential direct assessments on intervention in Board proceedings. They suggested a number of changes to address this concern. They asked the Board to issue a ruling early in each case stating whether it was going to directly assess parties. They had suggestions regarding the meaning of "significantly expand the scope of discovery." They asked the Board to appoint a mediator to deal with assessment questions, if asked. They asked for a rule describing the procedure for processing a formal objection to an assessment. As discussed above, the Board

made a number of changes to try to address these concerns. However, the Board does not believe it is appropriate to establish the suggested procedures to deal with assessment questions, since Iowa Code Supp. section 476.10 sets forth the procedure to be used. The Board added a provision in the 476.101(10) rule that states it will ordinarily include the method of assessment allocation in final Board orders, so the method may be appealed with the decision. Such a provision is not necessary in the 476.10 direct assessment rule, because ordinarily the Board will assess the utility in those dockets, so the method will be obvious. The Board added the provision in 17.4(3) that if there are unusual circumstances warranting assessment of an intervenor in a 476.10 case, it will issue an order at the earliest reasonable opportunity.

On January 29, 2002, the Rural Iowa Independent Telephone Association (RIITA) filed written comments. RIITA was very concerned with the chilling effect of the rules on comments and participation by industry associations and asked the Board for more predictability. RIITA suggested the rules should provide more specific guidelines to associations considering intervention and exempt intervenors who do not generate the litigation, and the Board should make several clarifications to the proposed rules. RIITA agreed with MidAmerican's suggestion to include the following language in subrule 17.4(1): "An intervenor is exempt from direct assessment if the intervention is in good faith and does not significantly expand the scope of the proceeding." RIITA stated paragraph 17.4(1)"c" should be eliminated because it is a given that direct assessments discourage participation and providing an exemption for interventors would be

more effective. As discussed above, the Board has made a number of changes to the rules to address the concern regarding the chilling effect of the proposed rules on participation and to provide additional clarification regarding when it will and will not assess costs. RIITA also stated that the references to "significantly expanding the scope of discovery" and "significantly expanding or changing the potential remedies" should be eliminated from proposed paragraph 17.4(1)"a." The Board eliminated these references as suggested. Whether an intervenor expands the scope of the proceeding is not necessarily significant in and of itself. The important issue is whether the expansion of the scope of the proceeding contributes to the public interest or not. The Board has changed the proposed rules to reflect this.

RIITA also suggested that subrule 17.6(1) be amended to include that an explanation be given to assessed parties with each direct assessment and that the sentence that we won't review expenses certified by Consumer Advocate be removed. It also suggested the rule should also provide that a separate docket will be opened if a party objects to the assessment within 30 days and provide a procedure for challenging assessments. RIITA also stated subrule 17.6(1) should be changed to specify when the direct assessments will be presented to allow some predictability for participants. Finally, RIITA supported the comments by the IAMU.

As discussed above, the Board will follow the procedure set forth in Iowa Code Supp. 476.10 when an objection is filed regarding an assessment. Also as stated above, the Board added a provision in the 476.101(10) rule to include the

method of assessment allocation in final Board orders and to include that if unusual circumstances warranted an assessment of an intervenor in a 476.10 case, the Board would issue an order at the earliest reasonable opportunity. However, section 476.10 does not provide for Board review of the expenses Consumer Advocate certifies to the Board except in the situation where an objection is filed.

On February 11, 2002, Deere & Company (Deere) filed written comments. Deere was concerned that the rules as drafted give the impression that all parties to a proceeding would routinely be assessed for a portion of the costs, unless the participant showed it qualified for an exclusion. Deere stated this would have a distinct chilling influence on customer participation in Board proceedings. Deere's understanding is that the intent of the Board is not to alter the current opportunity for full customer participation, but simply to add the ability to properly assess costs to parties causing those costs. Deere suggested adding something to the rule to clarify that intent and/or the process that will be used to decide whether to make an assessment. Deere suggested it would be helpful if the Board cautioned participants when they were "approaching or treading on turf that would necessitate an assessment." Deere also stated it would be appropriate for the Board to include a summary of, or reference to, the assessment rules in orders granting intervention. As discussed above, the Board made a number of changes to address the issues raised by Deere and others.

On March 5, 2002, the Iowa Industrial Energy Group (IIEG) filed written comments. The IIEG stated the Board should not chill participation by potential

intervenors. The IIEG encouraged the Board to indicate its intention to exercise the discretion granted to it in the statute and set forth a standard to not directly assess expenses or costs to intervenors. The IIEG stated that exercise of the discretion in the rule making is just as valid as on a case-by-case basis. The IIEG stated it and its members' viewpoint as industrial/commercial customers is needed by the Board and "to chill the potential for this industrial viewpoint participation by always having the possibility of costs attaching to participation for entering the forum is not a reasonable or reassuring alternative for the citizens of this state, including its energy-using corporate citizens." Alternatively, the IIEG suggested the Board indicate its intention to not assess costs against intervenors in a specified list of proceedings, including at least those proceedings impacting end-use rates and services. The IIEG stated that the Board initially sought the legislative change to reflect the changed nature of proceedings before it (i.e., not rate cases). The IIEG stated that current types of cases (i.e., "investigations" "inquiries" and "service proceedings") and participation by non-utility, non-end use customers have created assessment issues, and it is not apparent that regular interventions by end-users have. The IIEG urged the Board to focus the proposed rules to address what is truly at issue and suggested the Board provide an exemption from assessment for end-user intervenors. The IIEG urged the Board to clearly articulate the factors for assessment. For example, if an intervenor raised an issue not previously addressed by a party, even if that caused costs, it would be punitive to have the potential for liability for those costs attach simply because the person offered a perspective that should be

considered by the Board and would not be fair nor helpful to the Board, the process or the participant. As discussed above, the Board made a number of changes to the proposed rules to address these concerns.

The IIEG also stated that the potential requirement for financial disclosure as a condition of intervention is a great deterrent to participation. The Board will not change the proposed rule in response to this comment. Intervenors have the option to not provide such information and the Board will make assumptions regarding the person's financial resources. Consideration of the financial resources of the person is allowed by 476.10. Finally, the IIEG stated that if the Board retains the proposed rules, it should add language to indicate the likely liability of participants as early as possible in the proceeding. The Board added the provision in 17.4(3) that if there are unusual circumstances warranting assessment of intervenors in a 476.10 case, it will issue an order at the earliest reasonable opportunity. However, in most cases, the Board will not know many of the factors needed to make a judgment regarding how it will make assessments at the beginning of the case.

The IIEG also asked for the opportunity to submit additional comments on any subsequent modifications to the proposed rules. Since the changes from the proposed rules flow from the comments received are in character with the proposed rules and a logical outgrowth from them, and the parties had fair notice of the issues to be addressed, another opportunity for public comment is not necessary. The Board will adopt the rules as final. The Board recognizes that it

amended the rules to implement new provisions in the statute and will continue to monitor implementation to determine if additional rule changes need to be made.

The Iowa Farm Bureau Federation (Farm Bureau) filed written comments on April 19, 2002. Farm Bureau stated its main concern is protection of the consumer and landowner and, more specifically, their farm members. Farm Bureau is concerned that the rules suggest that if people express concerns to the Board about rate increases or utility services and proposals that will impact them, they will be charged. It stated that customers of utility companies should have the right to express their viewpoints about possible rate increases or electric transmission and pipeline easement proposals without being charged. Farm Bureau recommends that the rules reflect that a consumer or landowner will not be charged for direct assessments, remainder assessments, overhead expenses, or any other fees related to their protest or inquiry in situations such as electric transmission lines or pipeline easements or rate changes as proposed by utilities. These comments make it apparent that some members of the public do not clearly understand that utilities are assessed for costs in electric franchise and pipeline permit cases governed by Iowa Code chapters 478, 479, 479A, and 479B. Therefore, the Board added a reference to those provisions to the rules. The Board added a clarification that individuals who file complaints against utilities, and individuals who file protests or inquiries in rate cases, will not be directly assessed so long as they act in good faith. Only utilities are subject to remainder assessments.

ORAL COMMENTS RECEIVED AT THE APRIL 19, 2002, ORAL COMMENT HEARING:

RIITA made the following comments at the hearing. There are two basic issues facing an association deciding whether to intervene: predictability and amount. They need to know up front what costs they would have to pay if they intervene. They would like the rule to be clear that an intervenor who does not expand the issues and acts in good faith will not be assessed. No one can predict what the costs would be with the rule as written. In the recent Qwest case, RIITA intervened, did not file written testimony, asked eight or ten questions, and filed written briefs. RIITA's questions probably filled three or four of the 2,000-plus pages of transcript. In this case, RIITA believes it should not be assessed. The draft rule does not reflect the discretion given to the Board by the legislature. It has a list of factors. The rule would be far closer to the statute if it said outright that an intervenor is exempt from direct assessment if the intervention is in good faith and does not significantly expand the scope of the proceeding. If it is apparent that the intervenor is about to expand the scope or cause substantial extra costs, then that could be dealt with up front. RIITA supports an affirmative statement regarding intervenors like MidAmerican suggested. RIITA is giving an industry perspective of rural independent phone companies as a group when it is commenting and should not be assessed. As discussed above, the Board made a number of changes to the proposed rules to address these issues.

The IAMU, jointly with MRES, made the following comments at the hearing. IAMU and MRES agreed with RIITA regarding predictability and amount. They understand, appreciate, and support the need for the Board to be able to allocate and assess costs to the parties of proceedings. This is a complex issue. The proposed rules will chill participation before the Board. IAMU has already been chilled out of participating in recent generating plant siting cases and some rule makings because of the unpredictability of cost assessment. The Board should look at the IIEG's proposal to list those proceedings where a direct assessment would not apply. It agreed with MidAmerican's suggestion to explicitly state that intervention in a proceeding that does not expand the scope of the proceeding will not normally result in a direct assessment to the intervenor. The Board's expertise comes from listening to Iowans as well as from itself and its staff, and to the extent that is blocked or limited, the expertise is limited. IAMU agreed with MidAmerican's comment that persons may want to participate in a proceeding for informational purposes, to ensure that a Board action will not affect their interests, and it would be unjust to directly assess such participants. They asked how participants, such as labor unions and governmental entities, would know that they could be subject to direct assessment. As discussed above, the Board made a number of changes to the proposed rules to address these issues. In addition, the Board clarified that it will not directly assess persons who file written or oral comments in a rule making proceeding.

MidAmerican made the following comments at the hearing. The most important aspect of this rule making to MidAmerican is that cost causers are going to pay

the cost of proceedings that relate to them to a greater extent than in the past. The rules appropriately recognize a much larger variety of matters the Board has jurisdiction over than in the past, and the rules deal with those costs appropriately. MidAmerican had some concerns about intervention. MidAmerican intervenes for information in other utilities' rate proceedings, primarily to protect its interests and so they will have a voice in any policy development that may occur. MidAmerican does not believe it would be appropriate to assess a substantial proportion of the cost to it just because there is some policy development. It is difficult for companies located outside Des Moines to follow Board cases without intervening. The web site is only good for Board orders. MidAmerican urged the Board to consider an electronic filing system and there might not be so many interventions because parties could go to the electronic docket and see what was filed. As discussed above, the Board made a number of changes to the proposed rules to address the concern regarding intervention. Given the current budget situation, the Board is unable to work on consideration and development of an electronic filing system.

The IIEG made the following comments at the hearing. Their members are corporate energy users, whose voices have not been traditionally represented before the Board. This voice is a very important one for the Board to hear and the potential for costs to attach just for raising that voice has a chilling effect. IIEG asked the Board to state that intervention participation will not result in direct assessment of costs. If the Board will not do that, they asked that the rules provide that intervenors who are end users of the retail services offered by a

utility will not be directly assessed. IIEG further suggested that the Board could distinguish between intervenors who expand the scope of the proceeding and, in effect, create what could be a stand-alone proceeding and those who are merely responsive, preventative, or informational intervenors. This would provide their members with a better sense up front of the potential costs. IIEG was also concerned that there is a perception that their corporate members would always be able to pay, which is not always the case. There is never a cost-free intervention. Even if an intervenor is not assessed Board costs, the intervenor bears time costs, filing costs, and costs of expert witnesses. As discussed above, the Board made a number of changes to the proposed rules to address these issues.

Deere & Company made the following comments at the hearing. Deere understands, appreciates, and supports the need to be able to allocate and assess costs to parties in proceedings before the Board when participation by such a party causes either a significant cost or a significant increase in the scope and cost of the proceeding. However, Deere was concerned that the proposed rule gives the impression that all parties to the proceeding would be routinely assessed a portion of the cost. This would have a distinct chilling influence on customer participation in Board proceedings and valuable customer input would therefore be absent from consideration. Industrial customers need to be able to estimate the cost of participation within reasonable bounds or they will hesitate and/or decline to participate. Deere understands that the intent of the Board is not to alter the current opportunity for full customer participation in Board

proceedings, but simply to add the ability to properly assess costs to parties causing significant additional costs. Another purpose is to allow the Board to allocate and assess costs to parties bringing cases before the Board. Deere would like clarification in the rule regarding customer participation and assessments, so that customer intervenors would not be routinely assessed and so that the rule stated the process to be followed in deciding whether to make the assessment. Deere would like the Board to caution participants if they were approaching turf that would trigger an assessment and to carve out certain types of proceedings where assessments would not apply. Regardless of whether it is a cost of doing business, Deere looks at all these costs and decides whether to participate. As discussed above, the Board made a number of changes to the proposed rules to address these issues.

The IAEC made the following comments at the hearing. The IAEC was concerned about the chilling effect on participation. If an entity believed it would be assessed for participating, even if its anticipated role is very small, it is quite possible the entity would choose not to participate and hope its interest was represented by someone else. Interventions lead to a more complete record before the Board, and to require the intervening party to have to pay simply to complete the record that should have been made by the original participants is unjust. The IAEC did not imply that there should never be direct assessments, but that the Board should take care when choosing when to make them. The rule as drafted lacks predictability. The IAEC agreed that cost causers should be responsible for those costs. However, when talking about an intervenor who

completes the record, the cost causer is the party who commenced the action. The IAEC wants an exclusion for wholesale revenues of generation and transmission cooperatives to be included in the general definition of gross operating revenues rather than in subrule 17.6(2). As discussed above, the Board made a number of changes to the proposed rules to address these issues.

Qwest made the following comments at the hearing. Qwest supported the proposed rules. Qwest believes it is the intent of the legislature and the Board that individual citizens generally would not be assessed. When the Board travels around the state and solicits input, such as in the area code split proceedings, there should be no assessment when someone stands up and advocates a position, and Qwest does not believe the Board would assess such a person. When an individual citizen brings a complaint or is involved in a power line location or a siting proceeding, perhaps the individual should be assessed costs. While individual members of an association, such as RIITA, may be relatively small, collectively, the association represents a very large entity. Therefore, Qwest urged the Board to take the suggestion that the association would have difficulty with a financial assessment with a grain of salt. In the case of the area code split, it would not be fair to assess Qwest a larger share than RIITA. Large businesses participate in Board proceedings for business reasons, to influence the Board to bring about results that are in their company's interest. To ask them to pay for a share of the costs is what the statute intends. The statute clearly contemplates that the Board may assess parties such as a large business in an electric rate case when that business is seeking to keep its rates down. In the

last six years in the telecommunications industry, there has been significant change in the issues before the Board, many of them involving competition. Proceedings involving disputes between Qwest and other companies such as AT&T and MCI WorldCom have consumed vast amounts of the Board's time, and all the parties should bear some of the costs. In proceedings that are internal industry disputes and the Board is used as a resolution of the industry dispute, all parties should bear the costs and bear them across the board, regardless of whether they are an association or a private company. Qwest pointed out that it is very difficult to successfully oppose a request to intervene. Sometimes intervention is sought for a monitoring purpose. That causes a burden on the other parties, at a minimum, administrative and clerical costs, and it is appropriate that there be some assessment. Some parties intervene to give their position an additional opportunity to cross-examine. There is no reason they should not pay the cost of that intervention, because they are a party. They are trying to achieve very specific goals, and using the Board to do it, and they should pay for it. Intervenors who fully participate, sponsor witnesses, cross-examine, write briefs, and have exhibits should be assessed. The legislature has said the public policy of the state is that expenses of the Board should be allocated to a variety of parties. Qwest believes the Board should adopt the proposed rules. The Board recognizes the statute gives it discretion to balance the need to assess costs on cost-causers with the need for widespread participation in its cases. The Board also recognizes that potential assessment of costs may have a chilling effect on some interventions. Therefore, the Board

made a number of changes to the proposed rules in an attempt to more clearly define when it will and will not directly assess costs.

Consumer Advocate made the following comments at the hearing. The Board's function and purpose is to regulate utilities, and the more input, background, and detail that can be provided by entities other than the utilities, the better the Board can function. Intervention should be encouraged, not discouraged with the threat of assignment of costs. Intervenors provide the Board with a more developed and fuller record upon which the Board can make decisions, regardless of whether they agree or disagree with the utilities and Consumer Advocate. Utilities currently collect in their rates all of the costs of the Board and Consumer Advocate, and assigning any portion of those costs to intervenors would provide utilities with a windfall that should not occur. There was a move in the 1970s to award costs to intervenors that contributed to proceedings in a constructive and helpful manner. We are now coming 180 degrees from that position and intervenors would be potentially penalized instead of rewarded. As discussed above, the Board made a number of changes to the proposed rules to address these issues.